



# Secretary of State Jason Kander Election Review

## September 7, 2016

### St. Louis City – 2016 Primary Election

#### *Background*

The Missouri Secretary of State's Office was notified of potential issues regarding the absentee ballot process for the primary election for the Missouri House of Representatives, 78th District. The issues alleged an excessive number of absentee ballots being cast with a very high percentage of support for the incumbent and that an absentee ballot may have been completed by someone other than the voter.

Our office contacted the St. Louis City Board of Elections (Board) regarding these allegations. The Board referred the allegations to the St. Louis Circuit Attorney's Office and the United States Attorney's Office, who are currently reviewing them. The Secretary of State's Office will provide our review to these

entities and continue to provide any assistance, as needed.

Also, Bruce Franks, Jr. (primary candidate for House District 78) brought an election contest against Penny V. Hubbard (primary candidate for House District 78) under Sections 115.527 through 115.551, RSMo., in the 22<sup>nd</sup> Judicial Circuit. On September 2, 2016, the 22<sup>nd</sup> Judicial Circuit ordered a new primary election between Bruce Franks, Jr. and Penny Hubbard on September 16, 2016.

#### *Results*

The Missouri Secretary of State's office immediately contacted and remained in contact with the Board about the alleged absentee ballot issues. At that time, the Board stated that they had dedicated absentee ballot teams who thoroughly reviewed each absentee ballot application

for completion and compliance with state law.

The Missouri Secretary of State's Office reviewed these allegations with the United States Attorney's Office and the St. Louis Circuit Attorney's Office. The

St. Louis Circuit Attorney's Office is in the process of conducting an investigation.

Our office also has repeatedly attempted to contact each individual who provided information to the *St. Louis Post-Dispatch* regarding the absentee ballot process during the primary election. We were able to contact Thelma Williams and Patricia Bingham to corroborate the information they provided to the press. Thelma Williams confirmed that she completed and mailed her absentee ballot, and voted as she intended. She stated that she did not know why other applications would have been filled out in her name. Patricia Bingham stated that she was a temporary employee with the Board several years ago. She provided information on how the absentee ballot process was handled at that time, including interactions with Representative Penny Hubbard and Rodney Hubbard. During this primary election, she stated that she voted absentee in person.

The election contest, *Bruce Franks, Jr. v. Penny Hubbard*, Case No. 1622-CC09996, was filed in the 22<sup>nd</sup> Judicial Circuit in St. Louis City. The Court ordered a new election for the 78<sup>th</sup> State House District at which "registered voters will choose either Bruce Franks, Jr., or Penny Hubbard, as the Democratic nominee to be placed on the ballot for the November 8, 2016, General Election."

As part of the election contest, the parties stipulated that 142 of the absentee votes in the primary election were cast at the central location of the Election Board and

that none of the walk-in absentee votes were placed in an absentee ballot envelope. The Court found that "[t]he Board's failure to require the use of the ballot envelopes, when it accepted and counted the 142 absentee ballots, placed in person at the Election Board's central office, violated Missouri law." The Court further found "[t]he Election Board disregarded the statutes related to absentee voting by failing to require 142 absentee voters to use envelopes as provided by Missouri law. This disregard of the relevant statutes constitutes an irregularity." The parties further stipulated that eight additional votes were improperly counted by the Board in the underlying election.

The Court determined that these irregularities affected the outcome of the election and ordered a new primary election for September 16, 2016. Further, as part of the election contest, the Court found "[n]o credible evidence was presented from which this Court could find that any voter fraudulently cast a vote in this case. The evidence presented shows that the absentee voters in the August 2, 2016 election did everything they were told to do by election officials and staff. Any error or irregularity that this Court finds herein, is solely the responsibility of the City of St. Louis Board of Election Commissioners."

Article VIII, Section 7 of the Missouri Constitution provides for absentee voting as allowed by general law. Sections 115.275 through 115.304, RSMo., establish the requirements and process for absentee voting. These include: the

reasons voters are eligible to cast an absentee ballot; the process to request and deliver absentee ballot applications and return absentee ballots which includes the absentee ballot statement and envelope; reasons for rejecting absentee ballots; and the process for counting them.

While the review did not provide sufficient evidence to warrant a formal probable cause statement, based on the circumstances, we are forwarding our findings to the U.S. Attorney and St. Louis Circuit Attorney to assist in their ongoing investigations, as they have authority and resources not granted to

the Secretary of State's Office to continue with this case. Our office strongly encourages the St. Louis Circuit Attorney's Office to review each absentee ballot cast in the primary election to determine if there were any violations of election laws. If it is determined that any election laws were broken by a campaign, charges should be filed.

Additionally, the Secretary of State's Office will remain in contact with the Board as it complies with the court order and conducts this new election to ensure that every eligible voter has a right to vote and only eligible voters have that opportunity.